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CLEARINGHOUSE RULE 98-156

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated September 1998.]

General Comment

The constraints of the narrative comment format of a Clearinghouse report make it difficult to convey the poor condition of this rule; a complete rewrite of the rule by Legislative Council Staff would be necessary to identify all the problems with the rule. The poor organization, lack of clarity and apparent lack of careful editing make what should be a relatively simple, straightforward rule a confusing, seemingly complex rule. A substantial rewrite of the rule is in order.

2. Form, Style and Placement in Administrative Code

- a. The format of the introductory clause is not consistent with s. 1.02 (1), Manual.
- b. The treatment clause of SECTION 1 should read: “Chapter PSC 186 is created to read:”. This clause should immediately precede the text of the rule.
- c. Section PSC 186.11 (1) can simply read: “This chapter is authorized by s. 196.498 (2), Stats.”
- d. In s. PSC 186.11 (2) and other pertinent provisions of the rule, internal reference to “ch. PSC 186” should be to “this chapter.” [See s. 1.07 (2), Manual.]
- e. In s. PSC 186.11 (3), first sentence, “applies to” can be substituted for “shall be observed by all.”

f. In s. PSC 186.11 (4), “precludes” should be substituted for “shall preclude.” However, the subsection can be simplified along the following lines: “The commission may grant a variance from a nonstatutory requirement of this chapter to . . . if the alternative meets the intent of this chapter.” [See comment 5. a. also.]

g. In s. PSC 186.11 (6), a period should follow “operator” and “The action is” should be substituted for “which action, however, shall be.”

h. Section PSC 186.12 (intro.) should read: “In this chapter:”.

i. The semicolons following subsections in s. PSC 186.12 should be replaced by a period. With the exception of introductory material, which ends with a colon, all subunits of a rule should end with a period. [See s. 1.03 (intro.), Manual.] The entire rule should be reviewed in this regard. Also, introductory material usually includes a phrase such as “all of the following” or “any of the following.”

j. In s. PSC 186.12 (8), it is suggested that “alleging” precede “failure.”

k. In s. PSC 186.12 (9), the material after the first sentence should be placed in a note to the subsection. [See s. 1.09 (1), Manual.]

l. In s. PSC 186.12 (16), “means” should be substituted for “is.”

m. In s. PSC 186.12 (18), the second sentence should begin: “For domestic or volumetric meters, “percent registration” means”

n. In s. PSC 186.12 (21), the acronym should be surrounded by quotation marks rather than parentheses and “or” should precede the acronym. [See s. 1.01 (8), Manual.] The full term or the acronym should then be used in the text of the rule and any occurrences of the acronym in parentheses should be deleted. The second sentence of sub. (21) should be placed in a note to the subsection.

o. Given the definitions of “mobile home park operator” and “mobile home park contractor,” it appears that s. PSC 186.13 should begin as follows: “A mobile home park contractor and a mobile home park operator that provides water or sewer service to the occupants of its mobile home park”

p. In s. PSC 186.22 (1), can the first two sentences be combined? If not, the subsection should be divided into two paragraphs--one which includes the first and third sentences and the other which includes the second sentence. In addition, several changes should be made. In the second sentence, “also” and “as required above” should be deleted. In the third sentence, “The” should be substituted for “Such.”

q. In s. PSC 186.22 (2), “If” should replace “Where” and “the” should replace “such a.”

r. In s. PSC 186.31 (1) (a), “the” should replace “such.” The entire rule should be reviewed and where appropriate, “such” should be replaced by an appropriate article.

- s. In s. PSC 186.31 (1) (b), the last sentence should be placed in a note to the paragraph.
- t. In the title to s. PSC 186.32, “METHODS” should replace “METHODOLOGY.”
- u. The introductory clause to s. PSC 186.33 (1) should read as follows: “A bill for water or sewer service provided by the mobile home park operator or mobile home park contractor shall include all of the following on the mobile home park occupant’s receipt:”.
- v. In s. PSC 186.33 (3) (intro.), the use of “should be” is inappropriate. If the intent is to require the allocation in sub. (3) unless a different allocation in sub. (4) is utilized, the introductory clause should read: “Except as provided in sub. (4), a partial payment received for water or sewer service shall be applied, in descending order until fully paid, to each of the following types of charges on the mobile home park occupant’s account:”.
- w. In s. PSC 186.33 (4), “provided that such” should be replaced by “if the.”
- x. In s. PSC 186.33 (5), last sentence, “may” should be substituted for “shall.”
- y. In s. PSC 186.33 (8) (a) (intro.), first sentence, “shall apply” should be substituted for “are required to make an application.” It appears that the last sentence of the introductory clause should end with “all of the following.” Also in that sentence, “a” should replace “the.” The subdivisions following par. (a) (intro.) should begin with “The.”
- z. In s. PSC 186.33 (8) (b), “may” should be substituted for “shall.” The entire rule should be reviewed for situations where “may not” should be substituted for “shall not.” [See s. 1.01 (2), Manual.] Finally, it is suggested that sub. (8) be given separate section status and placed at the beginning of the subchapter. Consideration should be given to making sub. (7) a subunit of the new separate section.
- aa. Section PSC 186.34 uses subsection titles; subsection titles are not used elsewhere in the rule. [See s. 1.05 (1), Manual.] Given the length of the rule, subsection titles are useful and consideration should be given to supplying subsection titles in the rest of the rule, especially in s. PSC 186.35.
- ab. It is suggested that the title of s. PSC 186.34 (1) be “NEW OR CONTINUED SERVICE.”
- ac. Section PSC 186.34 (1) (a) should begin: “Except as provided in par. (b),”.
- ad. In s. PSC 186.34 (1) (b), it is not necessary to include “under this section.”
- ae. The title of s. PSC 186.34 (3) should be “DEDUCTION OF ARREARAGES.”
- af. Section PSC 186.35 is excessively long and poorly organized. It is suggested that this section be reorganized, including dividing the section into three or more separate sections. For example, one section could specify the permissible reasons for disconnecting or refusing water or sewer service and also specify or cross-reference exceptions to otherwise permissible disconnection or refusal. Another section could indicate the general notice requirement prior to

disconnection and specify or cross-reference exceptions to the general requirement. Another section might specify the content of the required notice. Finally, a separate section might contain the procedure for disconnection.

ag. Section PSC 186.35 (1) (a) is awkwardly drafted. The first sentence could be written to read: “A notice of disconnection may not be issued until at least 20 days after the date of issuance of the bill.” The significance of the second sentence is unclear.

ah. It is suggested that s. PSC 186.35 (7) be stated as a prohibition, i.e., “. . . may not disconnect residential water service that is a necessary part of a mobile home’s heating system.”

ai. In s. PSC 186.35 (8) (c), “is” should be substituted for “shall be” in the first sentence.

aj. In par. (d), “existent” should be deleted, “may request” should be substituted for “shall have the right to” and “if” should be substituted for “, provided that.”

ak. Section PSC 186.35 (9) (a) should be divided into at least two subunits and the notice content should be set forth as subdivisions to par. (a). However, consideration should be given to placing the notice content provision in sub. (9) (f).

al. Section PSC 186.35 (9) (b) and (c) may be combined into a single paragraph. In the last sentence of the combined paragraph, “these” should be “the.”

am. It appears that s. PSC 186.35 (9) (d) is unnecessary given s. PSC 186.37 (1) and (6). Can s. PSC 186.37 (1) and (6) simply be cross-referenced? In the last sentence of par. (d), “the” should be substituted for “this.”

an. Section PSC 186.35 (9) (e) should be placed in s. PSC 186.37. In addition, “dispute” should replace “disputed issue.”

ao. Section PSC 186.35 (9) (f) 2. and 3. are awkwardly drafted. In par. (f) 5., “in the event that” should be replaced by “if.”

ap. Is s. PSC 186.35 (11) necessary, given s. PSC 186.34?

aq. The last sentence of s. PSC 186.36 (4) is awkwardly drafted. It should be redrafted in the active voice.

ar. In s. PSC 186.36 (5), “a” should replace “current,” “the” should precede “terms” and “may” should replace “shall have the right to.”

as. In s. PSC 186.37 (1) (intro.), “If a” should replace “Whenever the” and the second “the” should be replaced by “a.” It appears that much of the language in sub. (1) (intro.) is superfluous given the definition of “dispute.”

at. In s. PSC 186.37 (2) (b), “such as by” should be replaced by “, including.” The second sentence should read: “The commission staff may request in writing or by telephone the mobile home park operator or mobile home park contractor to investigate the dispute.”

au. In s. PSC 186.37 (3) (a), second sentence, “in writing” should be relocated to follow “request,” the commas surrounding the term should be eliminated and “issuance” should be substituted for “issue.”

av. In s. PSC 186.37 (3) (b), next-to-last sentence, “A response” should be substituted for “These comments.”

aw. In s. PSC 186.37 (4), second sentence, “A request for reconsideration” should replace “Such requests.”

ax. Section PSC 186.37 (5) (a) can be better stated: “If the commission decides under sub. (4) to conduct a hearing, the commission may impose conditions on granting the hearing. If the mobile home park occupant fails to meet a condition, the commission may not hold a hearing and no subsequent hearing may be held by the commission on the dispute.”

ay. In s. PSC 186.37 (5) (c), “The” should replace “Any such” and “thereon” should be deleted.

az. In s. PSC 186.37 (6), reference to “the” late payment charge should be to “a” late payment charge.

ba. It appears that s. PSC 186.38 can be included in s. PSC 186.37 (1). Again, review the definition of “dispute.”

bb. In s. PSC 186.41 (1), “in compliance” should be substituted for “so as to comply.”

bc. In s. PSC 186.62 (1), second sentence, “If” should be substituted for “Where.”

bd. The title for s. PSC 186.65 should be “REQUESTED TEST.” In the next-to-last sentence of the section, “the” should be substituted for “such.”

be. In s. PSC 186.66, “required” should be substituted for “needed.”

bf. In s. PSC 186.73, it is suggested that the reference to Department of Commerce and Department of Natural Resources requirements be placed in a note to the section.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Consideration should be given to restating or cross-referencing the second sentence of s. PSC 186.11 (3) in subch. III.

b. In s. PSC 186.11 (5), can the reference to “statutory sections administered by the public service commission” be more specific?

c. In s. PSC 186.33 (4), references to “set forth above” and “the allocation methodology set forth above” should be more specific; reference should be made to “under sub. (3).”

d. In s. PSC 186.33 (8) (b), the reference to s. PSC 186.35 should be more specific; i.e., what provision in that lengthy section is an exception to the prohibition in par. (b)?

e. In s. PSC 186.35 (2) (a), the parenthetical cross-reference should be in a note and the reference should be to s. PSC 186.36 (5).

f. In s. PSC 186.35 (9) (a), first sentence, the reference to “pars.” (3) and (4) should be to “subs.” (3) and (4). In addition, it appears that the cross-reference is incomplete; for example, sub. (5) should be referenced.

g. In s. PSC 186.36 (5), the parenthetical reference is inappropriate. Reference should be made to “under s. PSC 186.35” rather than “pursuant to disconnection of service rules (s. PSC 186.35).”

h. In s. PSC 186.36 (6), should the cross-reference in the last sentence also include “or (4)”?

i. In s. PSC 186.37 (1), it appears that pars. (c) and (d) can be combined to simply read: “(c) Attempt to resolve the dispute, including offering a deferred payment agreement under s. PSC 186.36.”

j. In s. PSC 186.37 (2) (a), can the reference to “available remedies” be made more specific?

k. In s. PSC 186.37 (5) (b), can the statutory reference be made more specific and is the procedure outlined in the statutory sections clearly transferrable to the hearing under the rule?

l. In s. PSC 186.51, it appears the reference to ch. PSC 185 should be more specific; where in that chapter is the standard specified? Also see s. PSC 186.63.

m. In s. PSC 186.64 (2), the parenthetical reference should be placed in a note to the subsection.

n. Can cross-references be included for the “requirements” mentioned in ss. PSC 186.71 and 186.73.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Section PSC 186.11 (4) fails to set forth a standard and procedure for adopting exceptions to the general procedures of the chapter. It is assumed that the exceptions will not be adopted by rule; therefore, standards and procedures should be set forth in the rules.

b. It is suggested that the definitions in s. PSC 186.12 be reviewed to make certain that they are utilized in the text of the rule. Further, are all the definitions necessary? Consider, for example, the definitions of “deferred payment agreement” and “dispute.”

c. In s. PSC 186.12 (5), should it be made clear that the delinquent amount or deposit is for water or sewer service?

d. In s. PSC 186.21, is the use of the first “or” correct? Are there situations in which both the mobile home park operator and mobile home park contractor for that park provide

water and sewer service? If so, may either one maintain a record or are both required to do so? Note that the commission's analysis to the section states that the section requires operators or contractors to keep records of water or sewer service outages lasting more than one hour **and** affecting more than 25% of mobile home park residents. The text of the rule uses "or" rather than "and."

e. In s. PSC 186.22 (1), first sentence, is reference to "the rules" to pertinent rules of ch. PSC 186? Will the commission provide a sample notice for operators and contractors?

f. In s. PSC 186.22 (2), can the rule be more specific as to when a second language is "common" in a mobile home park?

g. In s. PSC 186.31, sub. (1) (intro.) should be an unnumbered introductory clause and pars. (a), (b) and (c) should be subs. (1), (2) and (3). Accordingly, the cross-reference in current par. (c) should be to "sub. (1) or (2)." [See s. 1.03 (intro.), Manual.]

h. In s. PSC 186.31 (1) (c), to whom does the contractor provide written documentation demonstrating that higher charges are necessary?

i. In s. PSC 186.32 (intro.), it should be stated explicitly that the "Bills" referred to are sewer and water bills for mobile home park occupants.

j. Should s. PSC 186.33, relating to billing, include any provisions regarding the frequency of billing?

k. As written, s. PSC 186.33 (4) implies that the allocation of payments **must** be in a different order if requested by the mobile home park occupant. Is that the intent?

l. In s. PSC 186.33 (5), the use of "make" is unclear. Is it intended to mean "impose"? The reference to "par. (3)" should be to "sub. (3)." In addition, should sub. (4) be referenced? In the last sentence, to what is the 1% per month late payment charge to be applied?

m. In s. PSC 186.33 (6) (a), the use of "initiates" is unclear. Its relationship to sub. (5) is unclear. In addition, the relationship of sub. (6) (b) to sub. (5) is unclear. It appears to be a limitation on the imposition under sub. (5) of a late payment charge. Clarification is in order.

n. In s. PSC 186.33 (7), first sentence, the commas should be deleted. Can more specificity be given to "other responsible party"? If the other responsible party uses the water, will the other responsible party, rather than the mobile home park occupant, be billed? If so, should that party be notified of the right to dispute the billing? Is the third sentence necessary; provisions on disconnection are contained in s. PSC 186.35? Further, it appears that the subsection should follow sub. (8).

o. In s. PSC 186.33 (8) (a) (intro.), first sentence, "water and sewer" should precede "service." In the third sentence, to what does "the information" refer?

p. In s. PSC 186.34 (1) (a), whose "estimated gross bill" is referred to?

q. In s. PSC 186.34 (1) (b), will the mobile home park occupant be informed of the opportunity to supply the information? Is the reference to “federal income poverty guidelines” sufficiently specific? Can a note be included that tells persons where to find out what the federal poverty level is for the year? Also, should “gross income for the most recent calendar quarter” replace “gross quarterly income”?

r. Section PSC 186.34 (1) (c) implies that the operator or contractor and the occupant may not agree to more than three instalments. Is that the intent?

s. In s. PSC 186.34 (3) (a), should “for water or sewer service” precede “may”?

t. In s. PSC 186.34 (3) (b), consideration should be given to placing the last sentence in s. PSC 186.35.

u. Section PSC 186.35 (1) (b) and (c) unnecessarily repeat, are less comprehensive than and fail to cross-reference provisions that are set forth later in the section.

v. Section PSC 186.35 (1) (d) should be relocated to an appropriate place in s. PSC 186.37.

w. The reference in s. PSC 186.35 (1) (c) to “over this matter” should be replaced by “as a result of the dispute under investigation.”

x. Section PSC 186.35 (2) (a), first independent clause, appears inconsistent with the requirement to offer a deferred payment agreement under s. PSC 186.36.

y. None of the paragraphs following s. PSC 186.35 (2) (intro.) indicate by whom the conduct must be undertaken in order to permit disconnection or refusal.

z. In s. PSC 186.35 (2) (g), the commas should be deleted. Can “extraordinary collection charges” be stated with more specificity?

aa. In s. PSC 186.35 (5), the commas should be deleted.

ab. Section PSC 186.35 (6) (c) is unclear.

ac. In s. PSC 186.35 (8) (b), first sentence, the third comma should be deleted. Also, what determines whether the postponement is less than 21 days? How does the last sentence relate to the rest of the paragraph; does it refer to additional postponements after the 21-day period expires?

ad. In s. PSC 186.35 (9) (a), the third element of the required notice content does not appear to be discussed in the substance of the rule. It is not clear why the fourth sentence of the paragraph is located in the paragraph and what the conditions are that are referred to.

ae. In s. PSC 186.35 (9) (f) 3., the required information in that subdivision is stated in an unclear manner. Will the commission provide a sample disconnection notice for use by operators and contractors?

af. In s. PSC 186.35 (9) (f) 4., is it possible to defined “serious illness”? It appears that the reference to sub. (10) is incorrect.

ag. In s. PSC 186.35 (11), should “or disconnected” follow “refused”?

ah. In s. PSC 186.36 (1), how is a deferred payment agreement offered to an “account”?

ai. In s. PSC 186.36 (2), is the phrase “entered into due to the mobile home park occupant’s inability to pay the outstanding bill in full” necessary? See the definition of “deferred payment agreement.”

aj. It appears that s. PSC 186.36 (7) should be located in sub. (4) or the relationship between the two subsections be made more explicit.

ak. In s. PSC 186.37 (1) (d), it appears that “at the discretion of” refers to providing an opportunity to enter into a deferred payment agreement. Section PSC 186.36 (1) *requires* the operator or contractor to offer a deferred payment agreement.

al. How does s. PSC 186.37 (2) (d) relate to s. PSC 186.35? Also, that paragraph should be rewritten in the active voice.

am. Does the mobile home occupant receive notice of the ability under s. PSC 186.37 (3) (a) to avoid disconnection by requesting a formal review? The last sentence of that paragraph fails to indicate to what “confirmation” refers and who must have “requested” confirmation.

an. Section PSC 186.37 (3) (b) fails to indicate how the commission is to inform both parties of its decision.

ao. In the last sentence of s. PSC 186.37 (4), “a” should be inserted before “hearing.”

ap. What triggers the 10-day period in s. PSC 186.37 (5) (c)? The giving of notice, mailing of notice, receipt of notice?

aq. The relationship of s. PSC 186.37 (6) to sub. (3) (a) and to s. PSC 186.35 should be clarified.

ar. In s. PSC 186.38 (2), “procedure” should be substituted for “methodology.”

as. It is assumed that in ss. PSC 186.62 (2) and 186.63, reference to “As Found” and “As Left” are terms of art understood in the industry. If not, they should be defined.

at. Section PSC 186.65 provides that upon request, the test is to be made in the presence of the mobile home park occupant. Is the occupant informed of this option?